

**JAN 17 2006**

**CATHY A. CATTERSON, CLERK**  
**U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANTONIO NARANJO-MENDOZA,

Defendant - Appellant.

No. 05-50431

D.C. No. CR-04-02321-DMS

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Southern District of California  
Dana M. Sabraw, District Judge, Presiding

Submitted January 9, 2006<sup>\*\*</sup>

Before: HUG, O'SCANNLAIN and SILVERMAN, Circuit Judges.

Antonio Naranjo-Mendoza appeals the sentence imposed following his guilty plea to attempted entry after deportation and misuse of entry documents in violation of 8 U.S.C. § 1326 and 18 U.S.C. § 1546.

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Naranjo-Mendoza contends that *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), is no longer good law and that the district court violated his constitutional rights in enhancing his sentence under 8 U.S.C. § 1326(b) based on a non-jury fact finding regarding his prior commission of an aggravated felony. This contention is foreclosed by *United States v. Weiland*, 420 F.3d 1062, 1079 n.16 (9th Cir. 2005) (holding that we are bound to follow *Almendarez-Torres*, even though it has been called into question, unless it is explicitly overruled by the Supreme Court). Similarly, there is no merit to Naranjo-Mendoza's remaining contention that 8 U.S.C. § 1326(b) is unconstitutional in light of *Apprendi v. New Jersey*, 530 U.S. 466 (2000). *See United States v. Ochoa-Gaytan*, 265 F.3d 837, 845-46 (9th Cir. 2001) (holding that *Apprendi* carved out an exception for prior convictions that specifically preserved the holding of *Almendarez-Torres*).

**AFFIRMED.**